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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/729,371	12/08/2003	Peter Frank	095309.52960US	8142
23911	7590	01/25/2005	EXAMINER	
CROWELL & MORING LLP INTELLECTUAL PROPERTY GROUP P.O. BOX 14300 WASHINGTON, DC 20044-4300				LIEU, JULIE BICHNGOC
			ART UNIT	PAPER NUMBER
			2636	

DATE MAILED: 01/25/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Applicant No.</b>	<b>Applicant(s)</b>
	10/729,371	FRANK ET AL.
	<b>Examiner</b>	<b>Art Unit</b>
	Julie Lieu	2636

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 08 December 2003.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-13 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1,2 and 10-13 is/are rejected.
- 7) Claim(s) 3-9 is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 12/8/03.
- 4) Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) Notice of Informal Patent Application (PTO-152)
- 6) Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Claim Objections***

1. Claims 2-4 and 10-11 are objected to because of the following informalities: it is recommended that more definite language is used to replace the term “can be” because it is vague. Appropriate correction is required.

### ***Drawings***

2. The drawings are objected to because “S” in boxes 5 in figure should be clearly labeled as “SENSORS” instead of “S”.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as “amended.” If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. The replacement sheet(s) should be labeled “Replacement Sheet” in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the

drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1, 10, and 12 are rejected under 35 U.S.C. 102(b) as being anticipated by Kunz (DE 39 16 460 C2) (cited by the applicant).

**Claims 1, 10, and 12:**

Kunz discloses a system and method for dynamically adjusting a vehicle component which affects operation of the vehicle, and whose behavior is influenced by a characteristic variable comprising means for automatically changing the characteristic variable (longitudinal or lateral dynamics of the vehicle) while traveling, via an actuator element and a control unit which can adjust the actuator element via actuation signals in accordance with a stored calculation rule. Sensors are used in Kunz for supplying control measurement signals such as vertical and lateral forces exerted on the tires, which reflects behavior of a vehicle operator, determined over a predefined time period. Kunz thus inherently discloses that characteristics variables of

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oscillation profile of measured vehicle state variables are compared in the comparision unit of the control unit with assign setpoint variables to determine whether the vheicle operator adapts to the change in the bahavior of the vehicle component which results from the change in the characteristic variable of the vehicle component. An actuation then is fed to the actuator element in Kunz which at least partially reverses thechange in the charactereistic variable of the vhielc ecompoent, is generatif, if the driver does not adapt to the change in behavior of the vehicle component. See applicant's admitted prior art on page 1, last paragraph.

Claim 2:

In Kunz, at least one of vehicle stering angle and vehicle lateral acceleration is deteminned as a variable which can be influenced by the behavior of the driver.

Claim 11:

Inherently the vehicle component whichinfluences the drving behavior is one of the vehicle brake, the power steering syste, the drvie chain controller and the spring/damper system in the vehicle.

Cliam 13:

The operator adapts to the change of vhecle dynaiuics is determined by wehterh at least on oscilaltion parameter of the measured state variable exceeds a preset threshold value.

***Allowable Subject Matter***

5. Claims 3-9 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Conclusion***

6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Levine, US Patent No. 6,643,578, discloses a vehicle drivie override system.

Nishiyama, US Appl. 2001/0004723 A1, discloses a ehcle decelreation control apparaus and control method thereof.

Kawagoe, US Patent No. 5,023,997, discloses a fail-safe vehicle control system.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Julie Lieu whose telephone number is 571-272-2978. The examiner can normally be reached on Mon-Fri 9AM-6PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jeffrey Hofsass can be reached on 571-272-2981. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Julie Lieu  
Primary Examiner  
Art Unit 2636

Jan 20, 05